IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

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SUPREME COURT, U.S.

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS, ET AL.
Petitioners

v.

No. 82-432

JEROME CROWLEY, ET AL.
Respondents

MOTION TO LIMIT ISSUES IN WRIT OF CERTIORARI AND/OR TO DISMISS WRIT AS IMPROVIDENTLY GRANTED

The Respondents in the above entitled matter, Jerome Crowley et al., move this Honorable Court to limit its grant of certiorari to only one of the two questions for which the writ was sought and allowed; and, if limited, to dismiss the entire writ as improvidently granted. In support thereof the Respondents say:

I. The Court granted certiorari on a Petition presenting two questions, the second of which was:

> Do the remedies prescribed by §402 of the Act, 29 U.S.C. §482, for resolving disputes concerning the election of union officers proscribe the jurisdiction of the district court to enjoin the tabulation of ballots cast after the balloting process has been virtually completed?

(A) The question of whether this case concerned an "election already conducted" is not, and never was, in actual controversy in the instant case, as is demonstrated by the following brief review of the proceedings below:

(1) On December 12, 1980, shortly after Respondents filed this action, the District Court issued a temporary restraining order impounding the ballots in Petitioners' election pending further consideration of whether the Court should enjoin the ballots' being counted and order a new election conducted (Appendix to Petition for Writ of Certiorari (hereinafter App.) @ 104a-105a);

(2) On January 9, 1981 Petitioners voluntarily and unilaterally declared that electoral process to be null and void, and argued as a consequence that the District Court

lost jurisdiction of the claims before it (App. # 4a, in text and ftnt. 4);

(3) On July 13, 1981 the Court issued an injunction, which among other things incorporated into the form of an order the action the Petitioners had voluntarily taken (App. # 86a-93a).

When the injunction issued, indeed even in April, when the Court showed all parties its proposed order, neither party was requesting tabulation of the ballots cast on or before December 13, 1980. Though the aforestated question was potentially in issue in the case filed by the Respondents in December, 1980, Petitioners' unilateral actions, preceding the District Court's issuance of any injunction, waived and/or mooted any such question long before it was first raised by any party. Hence this issue was neither involved in nor discussed in the proceedings before the District Court, and no evidence or argument regarding this question was ever presented to or developed in the record created there. Indeed this issue was not even one designated on appeal to the Court of Appeals, though Petitioners did mention it in a footnote in their Brief to the First Circuit Court of Appeals, and the Secretary of Labor, who first intervened in these proceedings when they were pending oral argument before the Court of Appeals, thereafter discussed it at some length.

When the District Court issued its injunction, there was no "nearly completed" electoral process in progress to enjoin. The first election, far from having been completed and awaiting only the counting of ballots cast, had been nullified by January 19, 1981 voluntary action action of the union, not the subsequent orders of the Court. To the extent that the District Court refers in its July order to voiding the first election, it merely incorporates in its order that which the union had already agreed to do, and/or, by so declaring, had done. At the time the District Court issued

that order, all the Court had left to address regarding the first election was the issue set forth in the first, not the second question presented on the instant petition: what scope of relief, if any, could the Court order to remedy the effect of the Title I violations that had perpeated the nomination process.

The fact that no controversy regarding this question was or is presented in the instant case is further demonstrated by the fact that there was never, and still is, no order a Court could enter to effect any relief related to the above question. For these reasons the Court should not and cannot consider this question on the instant writ.

(B) Even if the Petitioners' declarations had not removed and or mooted this issue from the instant case long before the Federal Respondent first raised it, there is an additional reason why this Court should not consider this question on the instant writ. Even if the Petitioners had not long ago unilaterally and unequivocably voided the first electoral process, the only relief they could request this Court grant on this question is the reinstatement of an election conducted in clear violation of the explicit, mandatory timing requirements of 29 U.S.C. 1482 and the Secretary of Labor's regulations promulgated thereunder.

If the Court considers this question, and thereupon grants the relief Petitioners request and Secretary urges, it would necessarily void the District Court supervised, 1981 election, and reinstate the results of the ballots cast in 1980. As soon as this occurred, any member of the union would have the automatic right under the Act and 24 C.F.R. 452.136(a)(1) to have the union, the Secretary or the District Court void the results of the electoral process reinstated by this Court. For in the 1980 election, which was conducted by mail ballot, the ballots were required as a matter of law to have been both sent out no sooner than thirty days after the nominations meeting (i.e., 30 days

after November 9, 1980)(29 C.F.R. 452.72) and no later than fifteen days before the last date on which they could be returned (i.e., 15 days before December 13)(29 C.F.R. 452.102). By definition this election, for which nominations were made on November 9th and mail ballots returnable no later than December 13th, could not have complied and did not comply with these two related requirements of both Title IV of the Act and the regulations promulgated thereunder.

By requesting relief under this question, Petitioners and the Secretary of Labor ironically urge this Court to sanction an electoral process that was on its face conducted in violation of both a federal statute and the Secretary's own regulations thereunder. If equity would not estop Petitioners and the Secretary from seeking such relief of this Court, it certainly would make the granting of such relief by this Court at a minimum inappropriate. Hence for this additional reason the Respondents urge this Court not to entertain the second question Petitioners have presented to it.

II. In addition, Respondents request that, if the relief urged above is granted to them, the Court dismiss the instant writ in its entirety as improvidently granted because the remaining question presented, standing alone, does not meet the criteria for granting certiorari. In support of this request Respondents incorporate by reference and rely upon the reasons related to this question stated in their previously submitted Opposition to the Petition.

Respectfully submitted,

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